

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2029

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOSMER.

Read 1<sup>st</sup> time February 21, 2002, and 1000 copies ordered printed.

Read 2<sup>nd</sup> time February 25, 2002, and referred to the Committee on Criminal Law, March 7, 2002.

Reported from the Committee on Criminal Law March 14, 2002, with recommendation that the bill Do Pass by Consent.

Perfectured by Consent April 2, 2002.

TED WEDEL, Chief Clerk

4801L.01P

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### AN ACT

To repeal sections 302.510, 302.530, and 577.041, RSMo, and to enact in lieu thereof three new sections relating to certified police reports.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 302.510, 302.530, and 577.041, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 302.510, 302.530, and 577.041, to read  
3 as follows:

302.510. 1. Except as provided in subsection 3 of this section, a law enforcement officer  
2 who arrests any person for a violation of any state statute related to driving while intoxicated or  
3 for a violation of a county or municipal ordinance prohibiting driving while intoxicated or a  
4 county or municipal alcohol-related traffic offense, and in which the alcohol concentration in the  
5 person's blood, breath, or urine was eight-hundredths of one percent or more by weight or  
6 two-hundredths of one percent or more by weight for anyone less than twenty-one years of age,  
7 shall forward to the department a [verified] **certified** report of all information relevant to the  
8 enforcement action, including information which adequately identifies the arrested person, a  
9 statement of the officer's grounds for belief that the person violated any state statute related to  
10 driving while intoxicated or was less than twenty-one years of age and was driving with  
11 two-hundredths of one percent or more by weight of alcohol in the person's blood, or a county  
12 or municipal ordinance prohibiting driving while intoxicated or a county or municipal

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

13 alcohol-related traffic offense, a report of the results of any chemical tests which were conducted,  
14 and a copy of the citation and complaint filed with the court.

15 2. The report required by this section shall be **certified under penalties of perjury or**  
16 **for making a false statement to a public official and** made on forms supplied by the  
17 department or in a manner specified by regulations of the department.

18 3. A county or municipal ordinance prohibiting driving while intoxicated or a county or  
19 municipal alcohol-related traffic offense may not be the basis for suspension or revocation of a  
20 driver's license pursuant to sections 302.500 to 302.540, unless the arresting law enforcement  
21 officer, other than an elected peace officer or official, has been [certified] **licensed** by the director  
22 of the department of public safety pursuant to the provisions of [sections 590.100 to 590.180,]  
23 **chapter 590, RSMo.**

302.530. 1. Any person who has received a notice of suspension or revocation may  
2 make a request within fifteen days of receipt of the notice for a review of the department's  
3 determination at a hearing. If the person's driver's license has not been previously surrendered,  
4 it [shall] **may** be surrendered at the time the request for a hearing is made.

5 2. At the time the request for a hearing is made, if it appears from the record that the  
6 person is the holder of a valid driver's license issued by this state, and that the driver's license has  
7 been surrendered as required, the department shall issue a temporary permit which shall be valid  
8 until the scheduled date for the hearing. The department may later issue an additional temporary  
9 permit or permits in order to stay the effective date of the suspension or revocation until the final  
10 order is issued following the hearing, as required by section 302.520.

11 3. The hearing may be held by telephone, or if requested by the person, such person's  
12 attorney or representative, in the county where the arrest was made. The hearing shall be  
13 conducted by examiners who are licensed to practice law in the state of Missouri and who are  
14 employed by the department on a part-time or full-time basis as the department may determine.

15 4. The sole issue at the hearing shall be whether by a preponderance of the evidence the  
16 person was driving a vehicle pursuant to the circumstances set out in section 302.505. The  
17 burden of proof shall be on the state to adduce such evidence. If the department finds the  
18 affirmative of this issue, the suspension or revocation order shall be sustained. If the department  
19 finds the negative of the issue, the suspension or revocation order shall be rescinded.

20 5. The procedure at such hearing shall be conducted in accordance with chapter 536,  
21 RSMo, [not otherwise in conflict] **except when chapter 536, RSMo, conflicts** with sections  
22 302.500 to 302.540. **A report certified pursuant to subsection 2 of section 302.510, shall be**  
23 **admissible as evidence of the facts stated therein and any provision of chapter 536, RSMo,**  
24 **to the contrary shall not apply.**

25 6. The department shall promptly notify[, by certified letter,] the person of its decision

26 including the reasons for that decision. Such notification shall include a notice advising the  
27 person that the department's decision shall be final within fifteen days from the date [of  
28 certification of the letter] **such notice was mailed** unless the person challenges the department's  
29 decision within that time period by filing an appeal in the circuit court in the county where the  
30 arrest occurred.

31 7. Unless the person, within fifteen days after being notified [by certified letter] of the  
32 department's decision, files an appeal for judicial review pursuant to section 302.535, the  
33 decision of the department shall be final.

34 8. The director may adopt any rules and regulations necessary to carry out the provisions  
35 of this section.

577.041. 1. If a person under arrest, or who has been stopped pursuant to subdivision  
2 (2) or (3) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to  
3 any test allowed pursuant to section 577.020, then none shall be given and evidence of the refusal  
4 shall be admissible in a proceeding pursuant to section 565.024 or 565.060, RSMo, or section  
5 577.010 or 577.012. The request of the officer shall include the reasons of the officer for  
6 requesting the person to submit to a test and also shall inform the person that evidence of refusal  
7 to take the test may be used against such person and that the person's license shall be  
8 immediately revoked upon refusal to take the test. If a person when requested to submit to any  
9 test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be  
10 granted twenty minutes in which to attempt to contact an attorney. If upon the completion of the  
11 twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a  
12 refusal. In this event, the officer shall, on behalf of the director of revenue, serve the notice of  
13 license revocation personally upon the person and shall take possession of any license to operate  
14 a motor vehicle issued by this state which is held by that person. The officer shall issue a  
15 temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall  
16 also give the person a notice of such person's right to file a petition for review to contest the  
17 license revocation.

18 2. The officer shall make a [sworn] **certified** report to the director of revenue **in a**  
19 **format prescribed by the director**, which shall include the following:

20 (1) That the officer has:

21 (a) Reasonable grounds to believe that the arrested person was driving a motor vehicle  
22 while in an intoxicated or drugged condition; or

23 (b) Reasonable grounds to believe that the person stopped, being under the age of  
24 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths  
25 of one percent or more by weight; or

26 (c) Reasonable grounds to believe that the person stopped, being under the age of

27 twenty-one years, was committing a violation of the traffic laws of the state, or political  
28 subdivision of the state, and such officer has reasonable grounds to believe, after making such  
29 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

30 (2) That the person refused to submit to a chemical test;

31 (3) Whether the officer secured the license to operate a motor vehicle of the person;

32 (4) Whether the officer issued a fifteen-day temporary permit;

33 (5) Copies of the notice of revocation, the fifteen-day temporary permit and the notice  
34 of the right to file a petition for review, which notices and permit may be combined in one  
35 document; and

36 (6) Any license to operate a motor vehicle which the officer has taken into possession.

37 3. Upon receipt of the officer's report, the director shall revoke the license of the person  
38 refusing to take the test for a period of one year; or if the person is a nonresident, such person's  
39 operating permit or privilege shall be revoked for one year; or if the person is a resident without  
40 a license or permit to operate a motor vehicle in this state, an order shall be issued denying the  
41 person the issuance of a license or permit for a period of one year.

42 4. If a person's license has been revoked because of the person's refusal to submit to a  
43 chemical test, such person may petition for a hearing before a circuit or associate circuit court  
44 in the county in which the arrest or stop occurred. The person may request such court to issue  
45 an order staying the revocation until such time as the petition for review can be heard. If the  
46 court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the  
47 director of revenue and shall send a copy of such order to the director. Such order shall serve  
48 as proof of the privilege to operate a motor vehicle in this state and the director shall maintain  
49 possession of the person's license to operate a motor vehicle until termination of any revocation  
50 pursuant to this section. Upon the person's request the clerk of the court shall notify the  
51 prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the  
52 director of revenue. At the hearing the court shall determine only:

53 (1) Whether or not the person was arrested or stopped;

54 (2) Whether or not the officer had:

55 (a) Reasonable grounds to believe that the person was driving a motor vehicle while in  
56 an intoxicated or drugged condition; or

57 (b) Reasonable grounds to believe that the person stopped, being under the age of  
58 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths  
59 of one percent or more by weight; or

60 (c) Reasonable grounds to believe that the person stopped, being under the age of  
61 twenty-one years, was committing a violation of the traffic laws of the state, or political  
62 subdivision of the state, and such officer had reasonable grounds to believe, after making such

63 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

64 (3) Whether or not the person refused to submit to the test.

65 5. If the court determines any issue not to be in the affirmative, the court shall order the  
66 director to reinstate the license or permit to drive.

67 6. Requests for review as provided in this section shall go to the head of the docket of  
68 the court wherein filed.

69 7. No person who has had a license to operate a motor vehicle suspended or revoked  
70 pursuant to the provisions of this section shall have that license reinstated until such person has  
71 participated in and successfully completed a substance abuse traffic offender program defined  
72 in section 577.001, or a program determined to be comparable by the department or the court.  
73 Assignment recommendations, based upon the needs assessment as described in subdivision (21)  
74 of section 302.010, RSMo, shall be delivered in writing to the person with written notice that the  
75 person is entitled to have such assignment recommendations reviewed by the court if the person  
76 objects to the recommendations. The person may file a motion in the associate division of the  
77 circuit court, on a printed form provided by the state courts administrator, to have the court hear  
78 and determine such motion pursuant to the provisions of chapter 517, RSMo. The motion shall  
79 name the person or entity making the needs assessment as the respondent and a copy of the  
80 motion shall be served upon the respondent in any manner allowed by law. Upon hearing the  
81 motion, the court may modify or waive any assignment recommendation that the court  
82 determines to be unwarranted based upon a review of the needs assessment, the person's driving  
83 record, the circumstances surrounding the offense, and the likelihood of the person committing  
84 a like offense in the future, except that the court may modify but may not waive the assignment  
85 to an education or rehabilitation program of a person determined to be a prior or persistent  
86 offender as defined in section 577.023, RSMo, or of a person determined to have operated a  
87 motor vehicle with fifteen-hundredths of one percent or more by weight in such person's blood.  
88 Compliance with the court determination of the motion shall satisfy the provisions of this section  
89 for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's  
90 personal appearance at any hearing conducted pursuant to this subsection shall not be necessary  
91 unless directed by the court.

92 8. The fees for the substance abuse traffic offender program, or a portion thereof to be  
93 determined by the division of alcohol and drug abuse of the department of mental health, shall  
94 be paid by the person enrolled in the program. Any person who is enrolled in the program shall  
95 pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The  
96 administrator of the program shall remit to the division of alcohol and drug abuse of the  
97 department of mental health the supplemental fee for all persons enrolled in the program, less  
98 two percent for administrative costs. The supplemental fees received by the department of

99 mental health pursuant to this section shall be deposited in the mental health earnings fund which  
100 is created in section 630.053, RSMo.